

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)	2:06-cr-00367-HDM
)	2:16-cv-01271-HDM
Plaintiff,)	
)	
vs.)	ORDER
)	
ELLIOTT DAUGHERTY,)	
)	
Defendant.)	
_____)	

On April 14, 2017, the court entered an order denying the defendant's 28 U.S.C. § 2255 motion. (ECF No. 99). The court will deny defendant a certificate of appealability for that order.

The standard for issuance of a certificate of appealability calls for a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c). The Supreme Court has interpreted 28 U.S.C. § 2253(c) as follows: "Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); see also *James v. Giles*, 221 F.3d 1074, 1077-79 (9th Cir. 2000). The Supreme Court further illuminated the standard for

1 issuance of a certificate of appealability in *Miller-El v. Cockrell*,
2 537 U.S. 322 (2003). The Court stated in that case:


3 We do not require petitioner to prove, before the
4 issuance of a COA, that some jurists would grant the
petition for habeas corpus. Indeed, a claim can be
5 debatable even though every jurist of reason might
agree, after the COA has been granted and the case has
6 received full consideration, that petitioner will not
prevail. As we stated in *Slack*, "[w]here a district
7 court has rejected the constitutional claims on the
merits, the showing required to satisfy § 2253(c) is
8 straightforward: The petitioner must demonstrate that
reasonable jurists would find the district court's
9 assessment of the constitutional claims debatable or
wrong."

10 *Miller-El*, 123 S.Ct. at 1040 (quoting *Slack*, 529 U.S. at 484).

11 The court has considered the issues raised by defendant, with
12 respect to whether they satisfy the standard for issuance of a
13 certificate of appeal, and determines that none meet that standard.
14 The court therefore denies a certificate of appealability with respect
15 to the court's denial of defendant's 28 U.S.C. § 2255 motion.

16 IT IS SO ORDERED.

17 DATED: This 1st day of June, 2017.

18
19 

20 UNITED STATES DISTRICT JUDGE